

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 473 OF 1989

Hanamant Maruti Dhamal ... Appellant

V/s

Krishna Bapu Dhamal
(since deceased, through L.R.s);
and ors. ... Respondents

Mr. M.N. Dhamal for the appellant.

Mr. Narendra V. Walawalkar for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 13TH JULY, 2005

ORAL JUDGMENT:

1. This second appeal is preferred by the appellant defendant against the judgment and order passed by the II Addl. District Judge, Satara, dated 18.1.1989 allowing the appeal and setting aside the judgment and order passed by the Trial Court in R.C.S. No. 79 of 1981 and decreeing the suit of the plaintiff for perpetual injunction against the defendant.

2. The plaintiff filed the suit with submission that he had purchased the suit property bearing Grampanchayat

property No. 156, admeasuring 102 ft. East-West in length and 41 ft. South-North in width. The plaintiff then also purchased the southern side property of 1 ft x 95 ft. East-West of some of the property. The plaintiff started constructing drainage towards the southern side of suit property in his own land. The defendant obstructed the plaintiff from doing such construction and hence the plaintiff filed the suit for perpetual injunction simplicitor.

3. The defendant resisted the suit on the ground that towards West of defendant's property, there was common wall in between the plaintiff and defendant's property. Defendant had purchased his property from one Vithal Krishna Aslekar and his property is towards the southern side of the plaintiff. The predecessor-in-title of defendant executed one document in favour of plaintiff on 25.7.1980. The plaintiff constructed the drainage towards the southern side of the land of the defendant and took water pipeline. The defendant obstructed him. It was further submitted that the suit property was comprised in the area of the defendant and, therefore, the plaintiff had no lawful title on the suit property. On such and other grounds, the suit was sought to be dismissed.

4. The Trial Court adjudicated the dispute on merits on available evidence and after hearing both parties came to the conclusion that the plaintiff had failed to prove his title to the property and, as such, was not entitled to the decree of perpetual injunction and the suit came to be dismissed.

The appeal was carried to the District Court, Satara. The learned Addl. District Judge, Satara, on the basis of available evidence decreed the suit for perpetual injunction allowing the appeal. Hence the present appeal came to be filed.

5. The admission Court, while admitting this appeal, raised the substantial question of law to the effect that, whether the first appellate Court erred in interpreting the evidence as warranting proof of plaintiff's title and, therefore, entitling him to the injunction granted. In other words, the only question for our consideration in this appeal is, whether there is sufficient evidence led on behalf of the plaintiff establishing his title to the suit property.

6. I have heard the learned counsel for both parties.

Perused the record.

7. In fact, the second appeal should not have been admitted because the question of title is crystal clear from the documentary evidence itself. On perusal of the entire evidence, it is seen that the predecessor-in-title of the plaintiff's property had sold open space to the extent of 1 ft x 95 ft. to the plaintiff by sale deed on 25.7.1980 and that sale deed was prior to the sale deed of the defendant which was executed in his favour on 22.7.1981. Therefore, it is quite clear that the open space was sold to the plaintiff about one year prior to the defendant's sale deed. The original sale deed in favour of the plaintiff is showing north-south length of 1 1/2 ft. Then thereafter 1 ft. north-south was sold by the original owner to the plaintiff. From the sale deed Exh.37 dated 25.7.1980, it appears that 1 ft. x 95 ft. sold by the predecessor-in-title of the plaintiff was the open space adjoining to the southern wall of the plaintiff's house. While the sale deed executed in favour of the defendant by same predecessor-in-title of the plaintiff is of 22.7.1981 and, therefore, the lower appellate Court concluded that the plaintiff had acquired title in the

suit property since the date of sale deed i.e. 25.7.1980. In the circumstances, it was held that the plaintiff's possession in the suit property had to be held as lawful possession. The purchase of defendant being subsequent to the purchase of plaintiff, the sale deed in favour of defendant dated 22.7.1981 must be said as subject to sale deed executed by the same owner in favour of the plaintiff. In other words, once the property was transferred in favour of the plaintiff, plaintiff's predecessor-in-title had no right title, interest in the property which was sought to be transferred by subsequent sale deed in favour of the defendant dated 22.7.1981.

8. In view of this factual matrix, there is no doubt whatsoever that the plaintiff has proved his title to the suit property to the extent of 1 ft. x 95 ft. area and the learned lower appellate Court Judge had rightly recorded the findings to that effect.

In view of this position, no interference is required by this Court in the second appeal as the reasoning adopted and findings recorded by the lower appellate Court appears to be just, legal and proper.

In the result, the appeal stands dismissed with no order as to costs.

C. c. expedited.

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